U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Vermont Service Center Date: DEC 2 9 2000

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Russia who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner asserts that her return to the Ukraine will create an extreme hardship to herself. She submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
> >
> > (F) Is a person of good moral character;

[redacted]

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States with a K-1 fiancee visa on March 26, 1998. The petitioner married her United States citizen spouse on May 27, 1998 at Anchorage, Alaska. On December 10, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. He noted, however, that the information given by the petitioner in her affidavit and her response to his request for explanation as to why the petitioner felt she would not have the support of family should she return to the Ukraine are inconsistent and no documentation in support of either situation was given.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). To establish extreme hardship, the petitioner must demonstrate more than the existence of mere

hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960).

On appeal, the petitioner asserts that her return to the Ukraine will create an extreme hardship because she has no immediate family members and she has no support system there. She states that after the death of her mother in July 1998, she was increasingly ignored by her stepfather and estranged from her stepbrother and stepsister, especially now after her divorce. The petitioner submits excerpts from the U.S. Department of State, Ukraine Country Report on Human Rights Practices for 1998, and excerpts from the U.S. Department of State, Ukraine Consular Information Sheet for January 7, 2000. She states that the criminal element is firmly established in the Ukraine, and that crime in general is a growing problem. She further states that the collapse of the economy in the former Soviet Union has effected dramatically the type of work available for a young woman as herself. She claims that if forced to return to the Ukraine, she is at extreme risk of being forced into a lifestyle defined by the criminal syndicate, and there is nobody left in her home country to help her and to protect her life.

The evidence furnished, however, is insufficient to establish that the petitioner's removal from the United States would result in extreme hardship based on economic, political, or social problems in her country. The petitioner has not explained how the articles and reports on violence against women in Ukraine apply directly to her situation. Nor has she established any specific relationship between her return to Ukraine or Russia and the manner in which the conditions there would affect her, whether living in a country where violence exists will subject the petitioner to such violence, that she would not find employment there or that finding employment is particularly difficult as claimed. The loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

The petitioner states that a member of the local criminal syndicate [redacted] was pressuring her to establish a relationship with him, and when [redacted] knew that she rebuked him for [redacted] (her U.S. citizen spouse) and she decided to go to the United States, he became obsessive towards her. She further states that police took Baghen into custody in the spring of 1998, and from jail, he wrote a letter to her stepfather expressing his rage for choosing an American over him, and threatening her. She submits a copy of a Russian letter alleged to have been written by [redacted] and the petitioner's English translation of the letter. While the content

of this letter is of concern and a threat to the petitioner, there is no evidence that the petitioner has turned this letter over to the authorities in the Ukraine and/or Russia. Nor has she established that she would not be able to receive protection from the authorities in the Ukraine or in Russia.

The petitioner submits an affidavit dated August 7, 2000, from [redacted] Direct Services Advocate, Abused Women's Aid in Crisis, similar to affidavits previously written by Ms. Meredith and furnished by the petitioner. Ms. [redacted] states in this affidavit that she is unaware of any domestic violence services available to women in the Ukraine. However, as noted by the director, it cannot be determined the extent to which these services are needed for the petitioner's individual development and recovery. Nor is there evidence to establish that the petitioner is presently receiving treatment for her medical or psychological condition, the seriousness of her health, whether her presence in the United States is vital to her medical and psychological needs, that her medical and psychological needs cannot be met in her home country, or that she cannot be treated there.

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). In the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of her stepbrother in Ukraine or her stepsister in Russia. While the petitioner claims that she and her siblings are estranged, she has not established that she would not receive support from them. As noted by the director, the information given by the petitioner in her affidavit and her response to his request for explanation as to why the petitioner felt she would not have the support of family should she return to the Ukraine are inconsistent, and no documentation in support of either situation was given.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

Although not previously noted by the director, a review of the petitioner's Service file reflects that the petitioner's application for adjustment of status to permanent residence was denied by the Service on June 30, 1999. The Anchorage district director noted that the petitioner's U.S. citizen spouse was sufficiently convinced of her fraudulent intention regarding the marriage and he filed for divorce on April 12, 1999. Because it appears that the petitioner's marriage to the U.S. citizen spouse

was contracted solely for the purpose of obtaining immigration benefits, the district director denied her application. The Service record is devoid of evidence that the petitioner refuted this finding of the district director.

Further, upon review of the record of proceeding, it is determined that the record does not contain satisfactory evidence to establish that the petitioner entered into the marriage to the United States citizen in good faith pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.